

No. 12418

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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CALIFORNIA STATE BOARD OF EQUALIZATION,

*Appellant,*

*vs.*

GEORGE T. GOGGIN, Receiver in Bankruptcy of the Estate  
of Exeter Refining Company,

*Appellee.*

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## PETITION FOR REHEARING.

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## TABLE OF AUTHORITIES CITED

| CASES   | PAGE |
|---|------|
| State of Missouri v. Earhart, 111 F. 2d 992, 154 A. L. R. 1255  | 3    |
| Thomson v. Toman, 119 F. 2d 971.....                            | 2    |
| STATUTES  |      |
| Bankruptcy Act, Sec. 57(j).....                                 | 2    |
| Bankruptcy Act, Sec. 302.....                                   | 3    |
| Bankruptcy Act, Sec. 307.....                                   | 3    |
| United States Code Annotated, Sec. 93(j).....                   | 2    |
| United States Code Annotated, Title 11, Sec. 702.....           | 3    |
| United States Code Annotated, Title 11, Sec. 707.....           | 3    |
| United States Code Annotated, Revised Title 28, Sec. 959(b).... | 2    |
| United States Code Annotated, Revised Title 28, Sec. 960.....   | 2    |



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## PETITION FOR REHEARING.

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*To the Honorable Judges of the United States Court of  
Appeals for the Ninth Circuit:*

The undersigned, your petitioner, respectfully submits that it has been aggrieved by an opinion of Your Honors rendered herein on the 28th day of June, 1950, in the respects hereinafter set forth, and prays for a rehearing of said matter :

1. The Court's holding that a receiver appointed in proceedings under Chapter XI of the Bankruptcy Act is not under a duty to file tax returns for the debtor's operations prior to the commencement of Chapter XI proceedings and to make payment of the tax liability disclosed by said returns is contrary to the decision of the Court of Appeals for the

Seventh Circuit in *Thomson v. Toman*, 119 F. 2d 971, and will greatly hinder and interfere with not only the collection of State taxes but Federal taxes as well.

2. The opinion implies that the filing of tax returns and the payment of taxes attributable to the debtor's operations constitute no part of the management of debtor's business. It is respectfully submitted in this regard that the filing of tax returns due after the appointment of a receiver in Chapter XI proceedings is as much a part of the management of the debtor's business as is the payment of wages, rent, and other similar items. See Sections 959(b) and 960, revised Title 28, U. S. C. A.

3. It is not the Board's position, as is set forth in paragraph 2, page 5 of the opinion dated June 28, 1950, that "since the Receiver conducted the debtor's business, by reason of that fact alone he became liable to penalties on taxes which had accrued prior to the inception of this proceeding." It is the Board's position that a receiver in Chapter XI proceedings is under a duty to file returns for the business he is managing *as the returns become due after the receiver's appointment*. And it is the Board's position further, for the reasons given in the Briefs on file herein, that a receiver should be subject to penalties for *his failure* to file returns as they become due after his appointment, and to make timely payment in the manner required by the pertinent taxing statute.

4. The portion of the opinion holding that Section 57(j) of the Bankruptcy Act, 11 U. S. C. A. Section 93(j), is applicable to all debts claimed in Chapter

XI proceedings, is contrary to the clear language of Sections 302 and 307 of the Bankruptcy Act (11 U. S. C. A., Sections 702 and 707 respectively). In this regard see *State of Missouri v. Earhart*, 111 F. 2d 992, 996, 154 A. L. R. 1255, and Briefs heretofore filed.

5. The impact of the opinion dated June 28, 1950, upon the administration of State and Federal taxing statutes with respect to taxpayers involved in Chapter XI proceedings is of sufficient importance to warrant a rehearing not only of the matters heretofore presented in the Briefs on file herein, but also of the matters above set forth.

Wherefore, petitioner respectfully urges that a rehearing may be granted and that the mandate of this Court may be stayed pending the disposition of this petition.

Respectfully submitted,

CALIFORNIA STATE BOARD OF  
EQUALIZATION,

By FRED N. HOWSER,  
*Attorney General*,

JAMES E. SABINE,  
*Deputy Attorney General*,

EDWARD SUMNER,  
*Deputy Attorney General*,  
*Its Attorneys.*

### Certification.

I, Edward Sumner, Deputy Attorney General of the State of California, an attorney regularly admitted to practice in the United States Circuit Court of Appeals for the Ninth Circuit, do certify that in my opinion the foregoing Petition for Rehearing in the case of California State Board of Equalization, Appellant, v. George T. Goggin, Receiver in Bankruptcy of the Estate of Exeter Refining Company, Appellee, is well founded and is not presented for the purpose of creating a delay.

EDWARD SUMNER.